



UNIVERSITY OF  
**TORONTO**  
FACULTY OF LAW



**INTRODUCTION TO ISLAMIC LAW**

**FIRST YEAR ELECTIVE**

**Professor Anver Emon**

**January 2008**

**These materials are intended for the sole educational use of students at the  
University of Toronto's Faculty of Law**




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**UNIVERSITY OF TORONTO  
FACULTY OF LAW  
WINTER 2008**

<b>INTRODUCTION TO ISLAMIC LAW FIRST YEAR ELECTIVE</b>
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**COURSE SYLLABUS**

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**COURSE DESCRIPTION**

This course introduces students to the modern and premodern history and theory of Islamic law. Relying on multiple disciplines, students will explore the history, politics, culture and theory underlying the origins of Islamic law from the early 8<sup>th</sup> century, its development through what is often called the “classical period” (i.e. circa 9-14<sup>th</sup> centuries), and its reintroduction and application in the modern nation state setting. The readings are meant to provide substantive background for students as they listen to and engage each other via the lecture and discussion that occur in the classroom. However, this course should not be considered an introduction to the field as might be had within an area studies program or a religious studies program.

Rather, as first year law school elective, this course is specifically designed with the first year student of the Common Law tradition in mind. Using the modalities of comparative law and legal philosophy to design the course, this elective will concentrate on fundamental questions that any system of law and governance arguably must contend with, although in their distinct fashion. We will emphasize how systems such as the Islamic, Canadian and the Common Law diverge on certain fundamental points and thereby inquire into what that divergence says about the Islamic system as well as our own. Throughout the course, we will make reference to cases from first year Torts to facilitate dialogue amongst ourselves about the nature and underlying values of each legal system, and how those values translate into legal decisions and precedent.

**COURSE REQUIREMENTS**

Attendance and class participation are required. Classes are designed to prompt students to extrapolate from their readings to larger questions of law, legal systems, and the nature and processes of adjudication.

In addition to class participation, students will also be evaluated on the basis of a 20 page paper to be handed in at the end of term.

**REQUIRED READING MATERIALS:** Course reader

## READINGS ASSIGNMENTS

### WEEK 1 (JANUARY 9<sup>TH</sup>): INTRODUCTION: A BRIEF HISTORY (NO READINGS)

### WEEK 2 (JANUARY 16<sup>TH</sup>): HISTORY AND FRAMEWORK OF ISLAMIC LAW

- M. Cherif Bassiouni and Gamal M. Badr, "The Shari'ah: Sources, Interpretation and Rule-Making," *UCLA Journal of Islamic and Near Eastern Law* 1, no. 2 (2002): 135-181 ..... 1
- Qur'an, 3:1-9.....25
- Case study on consumption of alcohol. ....27
- Majid Khadduri, trans., *al-Shafi'i's Risala: Treatise on the Foundations of Islamic Jurisprudence* (1961 reprint, Cambridge: Islamic Texts Society, 1997), 295-303. ....29
- NB: Al-Shafi'i (d. 820) is the eponym for the Shafi'i school of law. His *Risala* is considered the earliest extant work of Islamic legal theory. The second above addresses the authority of juristic interpretations, especially in cases where there is disagreement
- Glossary of Terms for Risala reading*
- Ijtihad* – independent interpretation and analysis
- Mujtahid* -- one who engages in *ijtihad*
- Qibla* -- The direction in which Muslims pray, facing the Ka'ba in Mecca.

### WEEK 3 (JANUARY 23<sup>RD</sup>) PRIMARY SOURCES ON THE JUDICIARY

- Qur'an 4:51-65, with emphasis on verse 59. ....35
- Selected translations from the tafsirs of Ibn Kathir and Fakhr al-Din al-Razi on Qur'an 4:59.....38
- Selected Translations from:
- Ibn Abi al-Damm, *Kitab Adab al-Qada' (The Book of Judicial Behavior)*.....41
- al-Mawardi, *Al-Ahkam al-Sultaniyya (The Laws of Islamic Governance)* .....43

### WEEK 4 (JANUARY 30<sup>TH</sup>): PREMODERN WORKINGS OF THE LAW: LAW, THE JUDICIARY AND SOCIAL CONTEXT

- David Powers, *Law, Society and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002), 23-94. ....53

### WEEK 5 (FEBRUARY 6<sup>TH</sup>) ISLAMIC LAW IN THE OTTOMAN EMPIRE

- Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 129-142. ....91
- Najwa al-Qattan, "Dhimmi in the Muslim Court: Legal Autonomy and Religious Discrimination," *International Journal of Middle East Studies* 31 (1999): 429-444. ....100
- "Mejelle Commission Report," in *The Mejelle: Being an English Translation of Majallah el-Ahkam-I-Adliya and a Complete Code on Islamic Civil Law*, trans. C.R. Tyser et al (Kuala Lumpur: The Other Press, 2001), xxiii-xxxi..116

NO CLASS ON FEBRUARY 13<sup>TH</sup> – BRIDGE WEEK

NO CLASS ON FEBRUARY 20<sup>TH</sup> – READING WEEK

**WEEK 6 (FEBRUARY 27<sup>TH</sup>) COLONIALISM, REFORM AND THE NATIONALIST LEGAL PARADIGM**

David Powers, "Orientalism, Colonialism and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, no. 3 (July 1989), 535-571.....122

Standish Grove Grady, "Advertisement to the Second Edition," in *The Hedaya: Commentary on the Islamic Laws* by Charles Hamilton (reprint, Delhi: Islamic Book Trust, 1982), iv. ....159

**WEEK 7 (MARCH 5<sup>TH</sup>): MODERN SHARI'A JURISPRUDENCE – IS THERE A PLACE FOR THE TRADITION TODAY?**

Killian Balz, "The Secular Reconstruction of Islamic Law: Egyptian Supreme Constitutional Court and the 'Battle Over the Veil' in State-Run Schools," in *Legal Pluralism in the Arab World*, eds. Baudouin Dupret et al (The Hague: Kluwer Law International, 1999), 229-243.....161

Wael Hallaq, "Can the Sharia be Restored?" in *Islamic Law and the Challenge of Modernity*, ed. Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (Oxford: Altamira Press, 2005), 21-53. ....169

**WEEK 8 (MARCH 12<sup>TH</sup>) GENDER, POLITICS AND ISLAMIC LAW**

John Esposito and Natana J. Delong-Bas, *Women in Muslim Family Law*, 2<sup>nd</sup> ed. (Syracuse: Syracuse University Press, 2001), 12-46. ....187

Anne McClintock, "Family Feuds: Gender, Nationalism and the Family," *Feminist Review* 44 (1993): 61-80. ....206

Lila Abu-Lughod, "Do Muslim Women Really Need Saving?" *American Anthropologist* 104, no. 3 (2002): 783-790. ....226

**WEEK 9 (MARCH 19<sup>TH</sup>) REFORMERS FROM WITHIN: GENDER AND SEXUALITY**

Kecia Ali, "Progressive Muslims and Islamic Jurisprudence: the necessity for critical engagement with marriage and divorce law," in *Progressive Muslims*, ed. Omid Safi (Oxford: Oneworld Publications, 2003), 163-189. ....234

Scott Siraj al-Haqq Kugle, "Sexuality, Diversity, and Ethics in the Agenda of Progressive Muslims," in *Progressive Muslims*, ed. Omid Safi (Oxford: Oneworld Publications, 2003), 190-234.....249

Qur'an, 11:69-83, 15:51-79. ....271

**WEEK 10 (MARCH 26<sup>TH</sup>) ISLAMIC LAW IN LIBERAL PLURALIST SOCIETIES**

Anver M. Emon, "Islamic Law and the Canadian Mosaic," in *Legal Consciousness*, eds. Leonard Kaplan and David Weissstub (forthcoming). ....277

**WEEK 11 (APRIL 2<sup>ND</sup>) REVIEW SESSION**

